IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 553 of 2006
With
CRIMINAL REVISION APPLICATION No. 554 of 2006
With
CRIMINAL REVISION APPLICATION No. 555 of 2006
With
CRIMINAL MISC.APPLICATION No. 9065 of 2006
In CRIMINAL REVISION APPLICATION No. 553 of 2006
With
CRIMINAL MISC.APPLICATION No. 9067 of 2006
In CRIMINAL REVISION APPLICATION No. 554 of 2006
With
CRIMINAL MISC.APPLICATION No. 9068 of 2006
In CRIMINAL REVISION APPLICATION No. 555 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHBHAI GUNVANTBHAI AJMERA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARSHIT S TOLIA for Applicant(s) : 1,
Mr.Mukesh A. Patel, A.P.P.for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/07/2007

ORAL JUDGMENT

1. In Revision Application no.553 of 2006 the petitioner-Rajeshbhai Gunvantbhai Ajmera has challenged the judgment and order dated 25-7-2005 passed by the learned 5th Additional Sr. Civil Judge & J.M.F.C.,Amreli, in Criminal Case no.953/2002 whereby he was convicted and sentenced to suffer S.I. for a period of seven days and to pay fine of Rs.500/- in default, to undergo S.I. for a period of two days, as also, the judgment and order dated 11-8-2006 passed by the learned Sessions Judge, Amreli, in Criminal Appeal no.20/2005 confirming the same whereas in Revision Application no.554/2006, the petitioner-Rajeshbhai Gunvantbhai Ajmera, has challenged the judgment and order dated 25-7-2005 passed by the learned 5th Additional Sr. Civil Judge & J.M.F.C., Amreli, whereby he was sentenced to suffer S.I. for a period of seven days and to pay fine of Rs.500/-, in default to undergo S.I. or a period of two days as also the judgment and order dated 11-8-2006 passed by the learned Sessions Judge, Amreli, in Criminal Appeal no.19/2005 confirming the same. Similarly, in Revision Application no.555/2006, the petitioner-Gunvantbhai Jagjivanbhai Ajmera, has challenged the judgment and order dated 25-7-2005 passed by the learned 5th Addl.Sr.Civil Judge & J.M.F.C., Amreli, in Criminal Case no.908/2002 whereby he was convicted and

sentenced to suffer S.I. for a period of seven days and to pay a fine of Rs.500/-, in default, to undergo S.I. for a period of two days ,as also ,the judgment and order dated 11-8-2005 passed by the learned Sessions Judge Amreli, in Criminal Appeal no.18/2005 confirming the same. In each of the criminal cases, the learned Magistrate also ordered fine of Rs.25000/-, Rs.25,000/- and Rs.30,000/-respectively to be paid to the respondent no.2 as compensation under Sec.357 of the Cr.P.C. and in Appeals these amounts were directed to be deposited without any delay by the learned Sessions Judge.

2. Since the question involved, the facts as also the parties are almost common in these three Revision Applications, with the consent of the learned Counsel for the parties, the same are taken up together and are being disposed of by this common judgment.

3. It is the case of the prosecution that the respondent no.2-complainant in each of these Revisions had lodged three different complaints against the petitioners in each of these applications for the offence punishable under Section 138 of the Negotiable Instruments Act in the Court of the learned Judicial Magistrate, First Class, Amreli. The allegation in the complaints are to the effect that the respondent no.2 had given some amounts to petitioners in each of these applications on interest at the rate of 18% per annum on different occasions and upon demand by the

respondent no.2 for return of the amounts, the petitioners in each of these applications had issued three different cheques bearing nos. 4320933 dt.9-7-2002 for Rs.20,000/-, 4320931 dated 9-7-2002 for Rs.20,000/- and 9876560 dated 9-7-2002 for Rs.26,250/- respectively of Dena Bank, Amreli,. According to the respondent no.2-complainant when these cheques were deposited in the said bank the same were dishonoured and returned with the endorsement" "insufficient funds". This fact was brought to the notice of the petitioners, however, they gave unsatisfactory replies, and therefore, notices were issued to each of the petitioners dated 23-7-2002, 9-7-2002 and 9-7-2002 respectively. The petitioners had neither replied to the notice nor paid the amounts in questions, and therefore, the respondent no.2 lodged three different complaints in the Court of learned Judicial Magistrate First Class, Amreli, against the petitioner which came to be registered as Criminal Case nos.953/2002, 886/2002 and 908/2002. The learned Magistrate after recording of evidence, recorded the further statement of the petitioners accused under Section 313 of the Cr.P.C. Thereafter, after hearing both the sides and considering material before him, the learned Magistrate passed the judgment and order of conviction and sentence dt.25-7-2005 in each of the Criminal Cases as stated in para-1 of this judgment. The petitioners, therefore, preferred Criminal Appeals nos.20/2005, 19/2005 and 18/2005 before the learned Sessions Judge, Amreli, all of which came to be dismissed by judgment and order dated 11-6-2007, giving rise to

the present Revision Applications.

4. Heard learned Counsel Mr. Harshit S.Tolia for the petitioners and learned A.P.P. Mr.Mukesh A. Patel. Though served none has appeared on behalf of the respondent no.2.

5. Learned Counsel for the petitioners in each of these applications has pressed these Revisions on the point of reduction in sentence only. In support of this submission,it is submitted by the learned Counsel that the petitioners are not involved in any offence other than the present one, that this is their first offence, that the petitioners have already paid up amounts of Rs.25,000/, Rs,25,000/- and Rs.30,000/- towards compensation in each of these applications a under Section 357, Cr.P.C. which amounts are more than the amounts unpaid against the dishonoured cheques, and that the entire family is dependent on the applicants. Considering all these aspects, this Court is of the opinion, that interest of justice will be served if the sentence imposed upon the applicants in each of these applications is reduced to TRC.

6. As a result of the foregoing discussion, these Revision Applications are partly allowed. The sentence imposed upon the petitioners in each of these applications by the learned 5th Additional Civil Judge and J.M.F.C., Amreli, in Criminal Case nos.953/2002, 886/2002 and 908/2002 by judgment and order

dated 25-7-2005 and confirmed in appeal by the lelrned Additional Sessions Judge, Amreli, in Criminal Appeals nos.20/2005, 19/2005 and 18/2005 shall stand reduced to TRC. The petitioner is directed to remain present before the Court on 16-8-2007. The amounts of compensation deposited by the petitioners in each of the applications , if not withdrawn by the respondent no.2-complainant, the same is permitted to be withdrawn. Rule is made absolute to the aforesaid extent. Direct service is permitted.

7. In view of the order passed in the main Criminal Revision Applications nos.553/2006, 554/2006 and 555/2006, no orders in the respective Misc. Criminal Applications nos.9065/2006, 9067/2006 and 9068/2006.

(M.D.Shah,J.)

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